



NATIONAL HEADQUARTERS
CIVIL AIR PATROL
UNITED STATES AIR FORCE AUXILIARY
105 SOUTH HANSELL STREET
MAXWELL AIR FORCE BASE, ALABAMA 36112-6332

19 February 2002

MEMORANDUM FOR WING COMMANDERS

FROM: DPH

SUBJECT: Wing Employee Issues

1. There are many federal and state laws that require employers to display in the workplace notices on a variety of employment issues, such as wage and hour, child labor, fair employment practices and health and safety, to name a few. Since you have a wing employee, you are required to post applicable notices in the work area. The notices for your state are attached. Request you post these notices, since law requires this, and because the IG team has made this an inspection item and they are writing findings in inspection reports when notices are not posted.
2. Some wing employees have made comments to IG team members that they do not know who their supervisor is. You, as the Wing Commander, should normally be the wing employee's supervisor. If you have delegated this responsibility to a staff member, it is recommended you put this delegation in writing and then inform the employee of the delegation.
3. Another finding by IG team members is wing employees, who are also CAP volunteers, are performing volunteer duties that are closely related to their paid duties and they are not being paid for those volunteer duties.
4. The Fair Labor Standards Act provides that employees may volunteer hours of service to their nonprofit employer provided "such services are not the same type of services which the individual is employed to perform for such public agency." The phrase "same type of services" means similar or identical services. For example, if you have a wing employee who performs duties as an administrative assistant and also performs administrative functions as a CAP volunteer, the employee must then be paid for those volunteer hours. To avoid possible wage violations, it is recommended you not allow wing employees to perform CAP volunteer duties that are similar or identical to their employee duties.

D. J. BARTLETT
Human Resources Manager

Attachment
a/s

BNA

Sec. 553.103 "Same type of services" defined.

(a) The 1985 Amendments provide that employees may volunteer hours of service to their public employer or agency provided "such services are not the same type of services which the individual is employed to perform for such public agency." Employees may volunteer their services in one capacity or another without contemplation of pay for services rendered. The phrase "same type of services" means similar or identical services. In general, the Administrator will consider, but not as the only criteria, the duties and other factors contained in the definitions of the 3-digit categories of occupations in the *Dictionary of Occupational Titles* in determining whether the volunteer activities constitute the "same type of services" as the employment activities. Equally important in such a determination will be the consideration of all the facts and circumstances in a particular case, including whether the volunteer service is closely related to the actual duties performed by or responsibilities assigned to the employee.

(b) An example of an individual performing services which constitute the "same type of services" is a nurse employed by a State hospital who proposes to volunteer to perform nursing services at a State-operated health clinic which does not qualify as a separate public agency as discussed in §553.102. Similarly, a firefighter cannot volunteer as a firefighter for the same public agency.

(c) Examples of volunteer services which do not constitute the "same type of services" include: A city police officer who volunteers as a part-time referee in a basketball league sponsored by the city; an employee of the city parks department who serves as a volunteer city firefighter; and an office employee of a city hospital or other health care institution who volunteers to spend time with a dis-

abled or elderly person in the same institution during off duty hours as an act of charity.

Sec. 553.104 Private individuals who volunteer services to public agencies.

(a) Individuals who are not employed in any capacity by State or local government agencies often donate hours of service to a public agency for civic or humanitarian reasons. Such individuals are considered volunteers and not employees of such public agencies if their hours of service are provided with no promise expectation, or receipt of compensation for the services rendered, except for reimbursement for expenses, reasonable benefits, and nominal fees, or a combination thereof, as discussed in §553.106. There are no limitations or restrictions imposed by the FLSA on the types of services which private individuals may volunteer to perform for public agencies.

(b) Examples of services which might be performed on a volunteer basis when so motivated include helping out in a sheltered workshop or providing personal services to the sick or the elderly in hospitals or nursing homes; assisting in a school library or cafeteria; or driving a school bus to carry a football team or band on a trip. Similarly, individuals may volunteer as firefighters or auxiliary police, or volunteer to perform such tasks as working with retarded or handicapped children or disadvantaged youth, helping in youth programs as camp counselors, soliciting contributions or participating in civic or charitable benefit programs and volunteering other services needed to carry out charitable or educational programs.

[52 FR 2032, Jan. 16, 1987; 52 FR 2648, Jan. 23, 1987]

Sec. 553.105 Mutual aid agreements.

An agreement between two or more States, political subdivisions, or interstate governmental agencies for mutual